HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 545 (SS) OF 2004

Nirmal Kumar,
S/o late Shri Lalit Singh Bhainsora,
Permanent R/o Village Atchket,
P.O. Thal, Distt.-Pithoragar. .....Petitioner.

Versus

1. State of Uttaranchal,
   Through Secretary, Education.
2. Regional Joint Director of Education, Nainital.
3. District Inspector of Schools, District-Udham Singh Nagar.
4. Principal, Aditya Nath Jha Government Inter College, Rudrapur, District- Udham Singh Nagar.
5. District Education Officer, Udham Singh Nagar.

.....Respondents.

Dated: 30.08.2006

Hon'ble Rajesh Tanodn, J.

Heard Sri Vijay Bhatt, Advocate for the petitioner and Standing Counsel for the respondents.

2. By the present writ petition, the petitioner has prayed for a writ of mandamus directing the respondents to consider the appointment of the petitioner on compassionate ground as an Assistant Clerk.

3. Briefly stated, the father of the petitioner was appointed as Assistant teacher on 22.09.1961 and he was posted at G.I.C. Pithoragarh from where he was transferred to the College at Rudrapur in the year, 1971. He was suffering

from some mental infirmity, therefore, he was referred to the Mental Hospital Bareilly on 12.06.1972 and when his treatment was undergoing on 04.04.1973, since then his whereabouts is not known.

4. In the year, 1976, the mother of the petitioner sent a letter to the Deputy Director of Education praying for requisite help. The said request is quoted below:-

"Respected Sir,

I beg to request you that my husband Sri Lalit Singh Bhainsura, B.A.L.T. Science Master G.I.C. Rudrapur joined Education Department in 1960 but to my bad luck my husband was mentally disturb And was admitted to Govt. Mental Hospital in 1998.....he is still there.

He has two sons age 8 & 12 besides me to support.....

I shall be grateful if you would please look into the mater and be kind enough to help me at this stage.

My father Captain K.S. SAWANT has approached you in Pithoragarh during your visit in D.I.O.S. office."

5. Thereafter, further prayer was made in the year, 1992 for the help in this regard. The direction given by the Deputy Director of Education, Kumaon Mandal, Nainital is quoted below:-

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mUgksus muds vkfJrksa dks fu;keuqlkj ns; vo’ks"kksa ds Hkqxrku gsrq vuqjks/k fd;k gSA

vLrq vkils vuqjks/k gS fd Jh HkSlksZM+k dks ns; fu;kekuqdwy vo’ks"kksa dk Hkqxrku djkuk lqfjuf’pr djk;saA izkFkZuki= dh ewy izfr layXu dh tk jgh gSA^^

6. However, the petitioner on 21.07.2003 made a representation to the respondent no.2 for the appointment under Dying in Harness Rules. Said application has not yet been decided although the same was sent on 22.07.2003. The same is quoted below:-

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7. It is a case where although the petitioner applied after a lapse of 31 years, but a perusal of the record shows that the whereabouts of the father of the petitioner was not known and from time of time, he was moving for the whereabouts and as such it is a case, where if the petitioner can be given any help, the respondent no. 3 may pass appropriate orders either

outstanding payment may be released in favour of the petitioner or the petitioner may be considered for the appointment on Class III post according to the qualification of the petitioner, if the rule provides.

8. It is well settled that appointment on the compassionate ground is purely humanitarian consideration because of the fact family will not be able to make both ends meet. The purpose of providing employment to the dependant of a Government servant dying-in-harness in preference to anybody else is to mitigate hardship caused to the family of the deceased on account of his unexpected death while in service. Thus compassionate appointment is treated to alleviate the distress of the family.

9. However, so far as the provision under the Dying in Harness Rules is concerned, no direction can be given after much delay as the rule provides that the application for appointment under Dying in Harness Rules shall be filed within a period of five years after the death of the concerned person. The rule 5 of the U.P. Recruitment of Dependent of Government Servant Dying in Harness Rules, 1974 provides as under:-

[5. Recruitment of a member of the family of the deceased.-(1) in case a Government servant dies in harness after the commencement of these rules and the spouse of the deceased Government servant is not already employed under the Central Government or a State Government or a Corporation owned or controlled by the Central Government or a State Government, one

member of his family who is not already employed under the Central Government of a State Government or a Corporation owned or controlled by the Central Government or a State Government shall, on making an application for the purposes, be given a suitable employment in Government service on a post except the post which is with the purview of the Uttar Public Service Commission, in relaxation of the normal recruitment rules if such person-

(i) fulfils the educational qualifications prescribed for the post,

(ii) is otherwise qualified for Government service, and

(iii) makes the application for employment within five years from the dated of the death of the Government servant:

Provided that where the State Government is satisfied that the time-limit fixed for making the application for employment causes undue hardship in any particular case, it may dispense with or relax the requirement as it may consider necessary for dealing with the case in a just and equitable manner."

10. In view of the above, the respondents are directed to accommodate the petitioner under Dying in Harness Rule in accordance with law after taking into consideration the qualification available with him, if possible.

11. Outstanding balance, if any, to the father of the petitioner may also be paid to the petitioner accordingly.

12. Subject to the aforesaid observations, writ petition is dismissed. No order as to costs.

(Rajesh Tandon, J.)

30.08.2006
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